

JOINT ADVISORY OPINION REQUEST SUBMITTED ON BEHALF OF THE
CALIFORNIA REPUBLICAN PARTY AND CALIFORNIA DEMOCRATIC PARTY

June 8, 2007

Thomasenia P. Duncan
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

AOR 2007-11

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OFFICE OF GENERAL
COUNSEL
2007 JUN 13 A 11:03

Re: Advisory Opinion Request re: Title 11, § 300.64 of the Code of Federal Regulations

Dear Ms. Duncan:

This request for an Advisory Opinion is filed jointly on behalf of the California Republican Party ("CRP") and the California Democratic Party ("CDP") and seeks the Commission's guidance on the following questions:

- (1) whether, under 11 C.F.R. § 300.64, a Federal officeholder or candidate's appearance as a speaker or guest at a fundraising event for a State, district, or local committee of a political party may be publicized on the committee's pre-event invitation materials and in other party committee communications, where such materials and/or communications also reference solicitations for non-Federal funds to be raised at the event; and,
- (2) if yes, what disclaimer, if any, is required on the part of the Federal candidate or officeholder or the State, district, or local committee of a political party.

The rules governing the questions posed here are found in the Federal Election Campaign Act of 1971, as amended ("FECA"), as well as the Commission's implementing regulations and Explanation and Justifications. First, the FECA provides that "a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party." 2 U.S.C. § 441i(e)(3). Implementing this, the Commission promulgated regulations stating, in relevant part:

[A] Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including but

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not limited to a fundraising event at which ... non-Federal funds are raised. In light of the foregoing:

(a) State, district, or local committees of a political party may advertise, announce, or otherwise publicize that a Federal candidate or individual holding Federal office will attend, speak, or be a featured guest at a fundraising event, **including, but not limited to, publicizing such appearance in pre-event invitation materials** and in other party committee communications.

11CFR §§ 300.64, 300.64(a) (emphasis added). Third, the Commission's Explanation and Justification for this Section states:

The Commission clarifies in section 300.64(a) that State parties are free within the rule to publicize featured appearances of federal officeholders and candidates at these events, **including references to these individuals in invitations.**

70 Fed. Reg. 37,651 (June 30, 2005) (emphasis added). The Explanation and Justification also provides that "[f]ederal officeholders and candidates are prohibited from serving on 'host committees' for a party fundraising event at which non-Federal funds are raised or from signing a solicitation in connection with a party fundraising event at which non-Federal funds are raised." *Id.* at 37,651; *see also id.* at 37,653 ("[T]he regulation does not affect the prohibition on Federal candidates and officeholders from soliciting non-Federal funds for State parties in fundraising letters, telephone calls, or any other fundraising appeal made before or after the fundraising event.").

Question Presented

Section 300.64, by its express language, permits a Federal officeholder or candidate's name to be used on an "invitation" to a "fundraising event" for a State, district, or local committee of a political party, even where such event will raise non-Federal funds. The Commission, in the section's Explanation and Justification, appears to support this interpretation by expressly stating that State parties are free to publicize featured appearances of federal officeholders and candidates at these events, including references to these individuals in invitations.

However, the Explanation and Justification also contains language prohibiting the solicitation for non-Federal funds by Federal candidates and officeholders in "fundraising letters" and "telephone calls" or "other fundraising appeal[s]." In so stating, the Explanation and

Justification appears to draw a distinction between invitations publicizing featured appearances sent out by *party committees*, which can contain solicitations for non-Federal funds consistent with the regulation, and solicitations for non-Federal funds by *Federal candidates and officeholders* in "fundraising letters" and "telephone calls" or "other fundraising appeal[s]," which would be impermissible under the regulation. In other words, while the statutory exemption embodied in 11 C.F.R. 300.64 does not permit Federal officeholders and candidates to solicit non-Federal funds for State parties in written solicitations, pre-event publicity or through other fundraising appeals, we believe the statute and the express language of the regulation allow the party committees themselves to solicit such funds and, in that same communication, publicize the featured appearance of a Federal candidate or officeholder at an event for which non-Federal funds are solicited. However, we seek to confirm that this is the correct reading of the regulation as we enter a period of extensive state and local party fundraising.

Policy considerations mandate such a reading of § 300.64 and its Explanation and Justification. While the FECA limits the amounts and types of funds that can be raised in connection with Federal and non-Federal elections by Federal officeholders and candidates, it specifically allows them to attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, and to speak without restriction at such events. 11 CFR § 300.64. With this exemption, the Commission has stated, Congress "preserve[d] the legitimate and appropriate role Federal officeholders and candidates play in raising funds for their political parties." *Id.* at 37,651. Given this role, it would defy logic to allow Federal officeholders and candidates to attend, speak or be a featured guest at a party fundraising event and to allow the party to publicize such attendance in pre-event invitations, but to not allow the invitations to solicit the funds the event is intended to raise.

In order to clarify the Commission's position on this matter we would appreciate the Commission's clarification on the following scenarios:

1. An invitation from a State or County Committee raising non-federal funds that references the federal candidate/officeholder on the invitation as the featured speaker/ honored guest and that also includes a request for non-federal funds over and above the limitations and prohibitions of federal law. The reply card also references the federal candidate/ officeholder.
2. A State Party or County Committee invitation the same as #1 above that includes reference to the federal candidate/officeholder on the invitation as speaker/ honored guest but does not actually solicit non-federal donations on

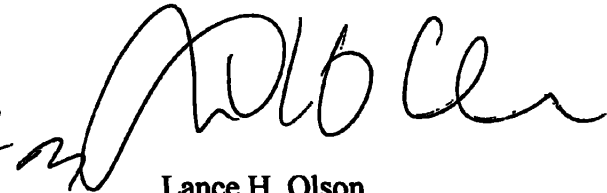
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the invitation itself. However, the reply card contains the non-federal donation request but does not reference a federal candidate/officeholder.

3. A State Party or County Committee "Save the Date" notice for a non-federal fundraiser that references a federal candidate/officeholder as the honored guest but does not ask for any donation, just noting the name of the event and date of the event and further noting that more information would follow. The actual solicitation would be made in a separate mailing that identifies the event and the date but does not make any reference to a federal candidate/officeholder.

In conclusion, the California Republican Party and the California Democratic Party request your guidance on this issue and respectfully ask that you consider this opinion request on an expedited basis. The issue presented is one of law, requiring the Commission to construe its own rule without need for further factual inquiry.

Sincerely,



Charles H. Bell, Jr.
General Counsel to the
California Republican Party

Lance H. Olson
General Counsel to the
California Democratic Party



"Charles H. Bell"
<cbell@bmhlaw.com>
06/26/2007 12:45 PM

To <RKatwan@fec.gov>
cc <lance@olsonhagel.com>
bcc

Subject Re: AOR by California Republican Party and California Democratic Party

History: This message has been forwarded.

Mr. Katwan:

This is to confirm on behalf of the California Republican Party and the California Democratic Party that both requestors would have communications with any federal candidate who was referenced in the invitations or save the date notice which are the subject of our AOR to obtain their comments or approval for the language and form of the invitations or notices so as to allow them to do their own compliance "due diligence."

Of course, both requestors would first have communications with the federal candidate related to inviting the federal candidate to, and confirming logistical arrangements for, the proposed event.

Please feel free to communicate with both Mr. Olson and me by email. If a more formal letter response is preferred as to any such communication, please let us know.

Thank you.

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